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LEGEND

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Taxpayer	=
Family Trust	=
Employee-Trust Agreement	=
Employee Trust	=
Newco	=
Family	=
Business A	=
Business B	=
Business C	=
Business D	=
Industry 1	=
Industry 2	=
City	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
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Year	=
State	=

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Dear

This letter is in response to your authorized representative's letter dated June 26, 2003, requesting rulings on certain federal income tax consequences of a series of integral steps in a permanent capital transaction. Additional information was received

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in a letter dated August 26, 2003, and in an e-mail dated September 24, 2003. The information submitted is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalties-of-perjury statement executed by the appropriate parties. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

Summary of Facts

Taxpayer, a calendar-year-cash-basis taxpayer, is a corporation formed under the laws of State and an "S corporation" for federal income tax purposes. Its shareholders are the members of Family. Taxpayer is engaged in the rental of residential and commercial real estate, but its principal asset is its ownership of a certain amount of the common stock of Corporation, which is engaged in Businesses A, B, C and D through wholly-owned subsidiaries.

Corporation was formed under the laws of State. It has 3 shareholders (Taxpayer, Family Trust and Employee Trust) and only 1 class of stock outstanding. Corporation is engaged in a variety of businesses in Industry 1 and Industry 2. It operates Business A in City. It owns and operates a Business B and b Business C in c states. Corporation's total operating revenues for Year were \$d million.

Family Trust was formed in State to preserve property for the benefit of certain members of Family. Family Trust's only asset is stock in the Corporation. Together, Family Trust and the Taxpayer own approximately e% of the issued and outstanding common stock of Corporation.

Employee Trust, which was formed by the Employee-Trust Agreement entered into on Date 1, was created to be a vehicle for employee ownership of Corporation. It owns the majority of the stock of the Corporation. Certain employees of the Corporation ("Employee-Unitholders") own units of the Employee Trust that correspond to the shares held in the corpus of the Employee Trust. The voting power of the stock owned by the Employee Trust is passed through to the Employee-Unitholders, who have voting control over the Corporation. Similarly, dividends generated on the stock owned by the Employee Trust are passed through to the Employee-Unitholders. Employees of the Corporation can buy Employee Trust units according to the terms of the Employee Trust Agreement, which sets forth a formula for determining unit price ("Unit Price"). Moreover, the Employee Trust Agreement compels Employee-Unitholders to offer the Units for sale upon death, or upon termination or retirement from employment with the Corporation.

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The growth of the value of the Corporation and the growth in the Unit Price, together with the Corporation's need for substantial additional outside permanent capital have compromised the ability of the Employee Trust to continue to serve as the principal owner of the Corporation. The amount of indebtedness which Employee-Unitholders are obligated to undertake to purchase units is burdensome and threatens the stability of Employee Trust, and also operates to limit the amount of capital available to Corporation to sustain its growth. Because of these problems, the Corporation's management met with the Taxpayer and the Family Trust to negotiate a way to obtain additional permanent capital and to discuss the future of the Employee Trust.

According to the provisions of the Employee Trust Agreement, any plan to raise additional permanent capital and/or affect the future of the Employee Trust requires the consent of the Family, which in essence means the consent of the Taxpayer and the Family Trust. Under the Employee Trust Agreement, the Family has (i) the right to veto any amendment of the Employee Trust Agreement, and (ii) an option to purchase, at the Unit Price, shares of the Corporation's stock owned by the Employee Trust voted for any transaction involving the sale of the stock of the Corporation, the sale or lease of all or substantially all of the assets of the Corporation, the dissolution of the Corporation, or the merger or consolidation of the Corporation (the "Options").

On Date 2, the Corporation's management, the Taxpayer and the Family Trust agreed to support and participate in a plan to raise additional permanent capital for the Corporation and to terminate the Employee Trust (the "Family-Corporation Agreement"). This agreement provides for the following steps to be taken (the steps are integral parts of the "Permanent Capital Transaction"):

- (1) Corporation will create a new corporation ("Newco").
- (2) Taxpayer, Family Trust and Employee Trust will contribute all the stock that each owns in the Corporation into Newco. Taxpayer and the Family Trust will also contribute the Options and their other rights under the Employee Trust Agreement to Newco. (The Corporation will not terminate; it will remain in existence as a subsidiary of Newco).
- (3) In exchange for their respective contributions, Taxpayer, Family Trust and Employee Trust will receive Newco Class B Common stock (the "Share Exchange") at an exchange ratio of 3 to 1.
- (4) Immediately after the Share Exchange, Taxpayer and Family Trust will exchange approximately $f\%$ of the Newco Class B Common shares received

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in the Share Exchange for g shares of Newco Class C Common Stock (the “Family Exchange”).

- (5) At the same time, Employee Trust Agreement will be amended to permit the Share Exchange and then the Employee Trust will be terminated. As a result, all of the Newco Class B Common shares received by Employee Trust in the Share Exchange will be distributed and owned directly by the Employee-Unitholders.
- (6) Newco will make an initial public offering of the Newco Class A Common shares (the “IPO”).
- (7) With the proceeds of the IPO and long term borrowing, Newco will make a tender offer for the Newco Class B Common shares owned by the Employees (formerly Employee-Unitholders) to enable them to significantly reduce the debt they incurred in acquiring the Employee Trust Units (the “Tender Offer”).

After the Permanent Capital Transaction, Newco will have three classes of stock outstanding: Class A Common, Class B Common and Class C Common. Class A Common will have i vote(s) per share and will in all respects be simple common stock. Class B Common will be identical to Class A Common except that they will have e vote(s) per share. (The Class B Common will have e votes per share to ensure that the Employees, who will own most of the outstanding Class B Common, continue to control Newco. The other Class B Common shares will be owned by Taxpayer and the Family Trust). Newco Class B Common shares will also be convertible into Newco Class A Common shares. Therefore, the Employees, the Taxpayer and the Family Trust have the right to convert the Class B Common shares into Newco Class A Common shares. The right to convert the Class B Common shares to Class A Common is limited, however. A holder of the Class B Common can convert part or all of his Class B Common shares to Class A Common only after offering the Class B Common for sale to Corporation’s employee benefit plans, other employee-shareholders, Taxpayer and Newco, in that order. (The limitation on convertibility is to ensure that the Employees and/or the Taxpayer and the Family Trust continue to control Newco. It is thought that, since the only difference between the Class B Common and the Class A Common is the number of votes to which each class is entitled, the only reason one would want to convert Class B Common to Class A Common is for the purpose of selling his interest in Newco. Thus, the limitation forces the seller to offer the Class B stock first to those persons already owning significant voting power in Newco).

Immediately following the Share Exchange and the Family Exchange, Taxpayer and the Family Trust will end up with h shares of Newco Class B Common stock. In addition, they will be the only owners of Newco Class C Common Stock and they

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cannot sell the Newco Class C Common stock to anyone but Newco or members of the Family. They may transfer the Class C Common stock by distribution, upon their liquidation or termination, or by gift or will, but only to certain specified holders. The Newco Class C Common stock is identical to the Newco Class A Common stock with the following exceptions:

- (1) Holders of Class C Common shares will have j vote(s) per share.
- (2) Holders of the Class C Common shares will have a class vote on certain strategic transactions (certain business combinations resulting in a change of control of Newco or certain of its subsidiaries) that would not otherwise compel class voting.
- (3) A Class C Common share participates in the growth of Newco with a preference. Holders of Class C Common shares will be entitled to the same dividend as Class A Common, but in no event less than the formula amount discussed below (the “minimum dividend”). Thus, Class C Common stock participates in Newco’s earnings share-for-share with the Class A and Class B Common stock, once the above Class C Common stock’s dividend preference has been satisfied.
- (4) Upon Newco’s liquidation, a Class C Common share participates in the assets and liquidation proceeds of Newco with a preference. Holders of Class C Common shares will be entitled to k times the amount that the Class A Common shares will receive in liquidation but in no event less than \$/per share (plus accumulated and unpaid dividends). Thus, upon liquidation, each share of Class C Common stock participates with the Class A and Class B Common stock in Newco’s assets and liquidation proceeds with the above preference.
- (5) Upon the Newco directors’ approval of a “strategic transaction”, Newco may redeem all shares of Class C Common stock at \$/per share (plus accumulated and unpaid minimum dividends) unless holder(s) of Class C Common stock deliver legally binding agreements to vote in favor of the strategic transaction, in which case the holder(s) may retain the Class C Common shares.
- (6) Holders of Class C Common stock have the right to convert, at any time and from time to time, all or any portion of their Class C Common shares into either k shares of Class A Common stock or a mix of m shares of Class A Common stock and n shares of Class B Common stock. [However, this is not true between the time when the holder(s) receive notice of the directors’ vote

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for a strategic transaction and the holder's delivery of its notice that it will vote for the strategic transaction.]

- (7) On Date 3, Newco may redeem all shares of Class C Common stock at \$/ per share (plus accumulated and unpaid minimum dividends) unless the holder(s) of Class C Common stock deliver notice that the holder(s) wish(es) to retain such shares.
- (8) On Date 4, any Class C Common shares then outstanding will be automatically converted into a mix of m shares of Class A Common and n shares of Class B Common stock (plus accumulated and unpaid minimum dividends).

The "minimum dividend" formula arises as follows: For the four years preceding the current year, Corporation has distributed dividends of \$ t per share on the p shares owned by the Taxpayer and the Family Trust, or a total of \$ q per year. The Taxpayer, the Family Trust, and the Corporation agree to maintain this dividend at a projected level of approximately $r\%$ of this amount, or \$ s . The agreed formula is based on the initial declared dividend on Class A Common and Class B Common stock immediately after the IPO. The management of Corporation has given the Taxpayer and the Family Trust projections suggesting that the \$ t level (adjusted for the Share Exchange ratio) will be reached within five years on the understanding that the dividend policy will be $u\%$ of post tax earnings.

The Family-Corporation Agreement permits the Taxpayer and Family Trust, including certain permitted family successors, to participate in the IPO. The Family Trust elected to participate to the extent of v shares of the Class B Common stock. To participate, the Family Trust would have to convert the Class B Common shares to Class A Common and then offer the resulting Class A Common for sale in the IPO. The Taxpayer and the Family Trust agreed not to tender any of their shares in the Tender Offer.

The Taxpayer and the Family Trust also agreed not to transfer their Newco shares during the three years following the IPO, except as otherwise provided for in the agreement or pursuant to a board-approved business combination transaction or under Rule 144 of the Securities Act of 1933. In addition, the Taxpayer and the Family Trust agreed not to exercise their rights under Newco's articles of incorporation to purchase any available shares of Class B Common stock if, after the proposed purchase, they would own more than $w\%$ of such stock then outstanding. Finally, under the Newco articles of incorporation, the Family may not sell or otherwise dispose of the Newco Class C Common stock except among themselves.

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The Family-Corporation Agreement gives Newco, during the period beginning *cc* days after and ending *dd* days after the pricing of the IPO, a one time right to redeem approximately *x* of the Class B Common shares held by the Taxpayer and the Family Trust, at *ee%* of the average closing price of the Class A Common shares in the *ff* trading day period immediately prior to the notice of redemption, on a specified redemption date between the *gg* and the *hh* day after the notice of redemption. In addition, each year, after the consummation of the transaction, Newco may redeem at *ee%* of the average closing price of the Class A Common shares in the *ff* trading day period immediately prior to the notice of redemption, Class B Common shares owned by the Family shareholders to the extent they own more than *w%* of the Class B Common shares then outstanding, on a specified redemption date between the *ii* and the *gg* day after the notice of redemption. However, in either case, the Family shareholders may avoid Newco's right to redeem B shares by converting the equivalent number of Class B Common shares to Class A Common shares prior to the specified redemption date without compliance with the Class B Common share offer procedures otherwise applicable under Newco's articles of incorporation.

The Family-Corporation Agreement provides the Family with certain rights to register with the SEC some or all of their Newco shares which have been converted into Class A Common shares for resale to the public. Beginning *dd* days after the pricing of the IPO, the Family members have the right to "demand" the registration of their shares, for resale, subject to the limitations described below. The Family members also have the right to participate in certain of Newco's proposed stock offerings to the public, subject to certain conditions. Notwithstanding these rights, Newco will not be obligated to effect any Family shareholder "demand" to register shares within *jj* days after (1) the effective date of a registration in which the Family members were notified of their rights to participate in a Newco offering or (2) any other registration of shares of the Family pursuant to a "demand" registration. In addition, Newco may postpone for up to *jj* days the filing or the effectiveness of any such "demand" registration statement if the board of directors determines that effecting such registration would have certain negative consequences.

The Family-Corporation Agreement also provides that, beginning with the first annual meeting of the shareholders of Newco following the IPO, the Family members will have the right to nominate one director to the board of directors of Newco (or, if the board of directors is comprised of more than eleven directors, the Family members will have the right to nominate two directors). This right terminates when the Family hold less than *y%* of the outstanding shares of Newco's common stock. The Family members also agreed, as shareholders of Newco, to take all actions necessary to elect all of Newco's recommended nominees for director.

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The Family-Corporation Agreement terminates if the IPO is not consummated by Date 5, or at the point when the aggregate number of common shares (i.e., Classes A, B and C Common) held by the Family members is less than z.

In consideration of the agreements and covenants of the Family under the Family-Corporation Agreement, Corporation has agreed to reimburse the Family up to \$aa for their legal and financial fees incurred on or after Date 6 in connection with the transaction.

Taxpayer furthermore represents the following:

1. Since the percentage of the Family's ownership of Class B Common stock is currently about bb% of the Class B Common stock outstanding, the possibility of the Family owning at any time hereafter w% or more of the outstanding Class B Common stock is remote.
2. If the option of the Company to call the Class C Common stock for redemption on Date 3 is exercised, the Family expects that the holders of Class C Common stock will notify the Company that they wish to retain their Class C Common shares unless the value of the stock into which Class C can be converted is significantly less than the redemption price.

Although the transactions described above are referenced as "proposed transactions," they have in fact been consummated.

Rulings

Based solely on the information submitted by the Taxpayer and the Family Trust, we rule as follows on the above described transactions:

1. The Class C Common stock received by the Taxpayer and the Family Trust will not be "preferred stock" within the meaning of section 351(g)(3)(A), and, accordingly, will not constitute "other property" for purposes of sections 354 and 356(a)(1)(B).
2. The Class C Common stock received by the Taxpayer and the Family Trust will not be "Section 306 Stock" within the meaning of section 306(c).
3. The Class C Common stock received by the Taxpayer and the Family Trust will not be "preferred stock" for purposes of section 305(b)(3), (4) and (5), or for purposes of the application of section 305(c).

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4. For Federal income tax purposes, the receipt by Taxpayer and the Family Trust of Newco Class B Common stock in exchange for Corporation stock and the Options and other rights under the Employee Trust followed by the exchange by Taxpayer and the Family Trust of some of their Newco Class B Common stock for Newco Class C Common stock will be disregarded and will be viewed as the exchange by the Taxpayer and the Family Trust of all of their Corporation stock for a combination of Newco Class B Common stock and Newco Class C Common stock.
5. The exchange by Taxpayer and the Family Trust of Corporation stock and the Options and other rights under the Employee Trust for a combination of Newco Class B Common stock and Newco Class C Common stock, as referred to in 4 above, qualifies as an exchange under section 351(a). (The Employee Trust was also a transferor in the above section 351(a) transaction).
6. No gain or loss will be recognized by the Taxpayer and the Family Trust upon the exchange of Corporation stock and the Options and other rights under the Employee Trust for Newco stock in the above section 351 transaction.
7. The Taxpayer's and the Family Trust's basis in their Newco Class B Common and Class C Common stock after the exchange will be the same as the aggregate basis of their Corporation stock and the Options and other rights under the Employee Trust held immediately before the exchange, allocated in proportion to their fair market value of each in accordance with Treas. Reg. §1.358-2(b)(2). (§358(a) and (b)(1)).
8. The Taxpayer's and the Family Trust's holding period for the stock of Newco that each receives in the exchange will include their holding period for the assets exchanged therefor, provided that the assets exchanged are capital assets as described in section 1221 or property described in section 1231. (§1223(1)).
9. The basis of the property received by Newco in the section 351 exchange will be the same as the basis of that property in the hands of the transferors immediately before the transfer. (§362(a)).
10. The holding period of the property received by Newco in the section 351 exchange will include the period during which the property was held by the transferors (§1223(2)).

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11. No gain or loss will be recognized by Newco on its receipt of property from the transferors in exchange for Newco's Class B Common and Class C Common stock. (§1032(a)).
12. The receipt by the Taxpayer and the Family Trust of Newco's Class B Common and Class C Common will not be treated as receipt of a distribution of property to which section 301 applies by reason of the application of section 305(b) or (c).

Caveats

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

Procedural Statements

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.

Sincerely,

Alfred Bishop

Alfred Bishop
Branch Chief, Branch 6
Office of Associate Chief Counsel
(Corporate)

cc: